S.B.Civil Writ Petition NO.5817/2004
Ram Chandra & Anr.
vs
ADJ No.2, Chittorgarth & Ors.

DATE OF ORDER : - 8.2.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Sandeep Saruparia, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 20.8.2004 by which the learned appellate court set aside the order of the trial court dated 8.10.2003 by which the trial court dismissed the plaintiff's application for grant of temporary injunction. The first appellate court after setting aside the order of the trial court allowed the plaintiffs' application for grant of temporary injunction and directed the defendants-petitioners to provide the way as ordered by the appellate court in its order dated 20.8.2004.

Learned counsel for the petitioner vehemently submitted that the trial court passed the reasoned order after considering all the evidence available on record. The trial court believed the affidavits filed by the petitioners. The first appellate court altogether differently appreciated the facts of the case and basically relied upon the order, which was

passed on 14th Dec., 1974 by the Tehsildar in relation to the way. According to learned counsel for the petitioner, the plaintiffs did not prove their case by getting any report from the Commissioner, therefore, the plaintiffs failed to prove that the way, which they are claiming was in existence at any point of time.

I considered the submissions of learned counsel for the petitioner and perused the reasons given by the two courts below. It appears from the order passed by the appellate court that the appellate court has considered the reasons given by the trial court and also looked into the factual aspect of the matter and found that the Tehsildar already passed the order about the way as back as on 14th Dec., 1974 and the affidavit filed by the petitioner cannot be accepted.

In view of the above, it is clear that the first appellate court after appreciation of the evidence and on the basis of the facts of the case passed the impugned order and the appellate court has not exceeded its jurisdiction or committed even any serious error of law or fact.

However, it is made clear that any observation made in any of the orders passed by the two courts below or by this court may not influence the court below in deciding the suit finally.

In view of the above, the writ petition of the petitioner is dismissed have no merit.

(Prakash Tatia), J.

c.p.goyal/-